

## Part 5

### Unlawful and Unprofessional Conduct - Penalties

#### **58-68-501 Unlawful conduct.**

- (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
  - (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license, certificate, or registration; and
  - (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic medical diploma, license, certificate, or registration;
  - (c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
    - (i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
    - (ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
  - (d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.
- (2) "Unlawful conduct" does not include:
  - (a) establishing, administering, or enforcing the provisions of a policy of accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
  - (b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
    - (i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
    - (ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
  - (c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
    - (i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
    - (ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
  - (d) requesting or recommending that a patient obtain a second opinion from a licensee;
  - (e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;
  - (f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:

- (i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or
- (ii) providing compensation incentives that are not related to the treatment of any particular patient;
- (g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee;
- (h) in compliance with Section 58-85-103:
  - (i) obtaining an investigational drug or investigational device;
  - (ii) administering the investigational drug to an eligible patient; or
  - (iii) treating an eligible patient with the investigational drug or investigational device; or
- (i) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Amended by Chapter 110, 2015 General Session

**58-68-502 Unprofessional conduct.**

- (1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:
  - (a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule; or
  - (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.
- (2) "Unprofessional conduct" does not include, in compliance with Section 58-85-103:
  - (a) obtaining an investigational drug or investigational device;
  - (b) administering the investigational drug to an eligible patient; or
  - (c) treating an eligible patient with the investigational drug or investigational device.

Amended by Chapter 110, 2015 General Session

Amended by Chapter 206, 2015 General Session

**58-68-503 Penalties and administrative actions for unlawful and unprofessional conduct.**

- (1) Any person who violates the unlawful conduct provisions of Section 58-68-501 or Section 58-1-501 is guilty of a third degree felony.
- (2)
  - (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:
    - (i) assessing administrative penalties; or
    - (ii) taking any other appropriate administrative action.
  - (b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund described in Section 58-67a-1.
- (3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501, before an administrative proceeding regarding the same conduct, the licensee may not be assessed an administrative fine under this chapter for the same conduct.
- (4)
  - (a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, Chapter 1, Division of Occupational and Professional Licensing Act,

Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

- (i) issue a citation to the individual;
  - (ii) attempt to negotiate a stipulated settlement; or
  - (iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.
- (b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:
- (i) assess a fine of up to \$10,000 per single violation or \$2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or
  - (ii) order to cease and desist from the behavior that constitutes a violation of provisions described in Subsection (4)(a).
- (c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-1-401 may not be assessed through a citation.
- (d) Each citation issued under this section shall:
- (i) be in writing;
  - (ii) clearly describe or explain:
    - (A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
    - (B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
    - (C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and
  - (iii) be served in accordance with the requirements of the Utah Rules of Civil Procedure.
- (e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.
- (f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.
- (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.
- (h) No citation may be issued under this section after six months from the day on which the last violation occurred.

Amended by Chapter 369, 2012 General Session